

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

SABEL STEEL SERVICE INC)
749 NORTH COURT STREET)
MONTGOMERY, ALABAMA)

CONSENT ORDER NO. 10-xxx-CWP

GENERAL NPDES PERMIT No. ALG 180010)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Sabel Steel Service Inc (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.); the ADEM Administrative Code Regulations (hereinafter "ADEM Admin. Code r. ") promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

STIPULATIONS

1. The Permittee operates a scrap metal recycling facility (hereinafter the "Facility") located at 749 North Court Street, Montgomery, Montgomery County, Alabama. The Facility discharged pollutants from a point source into an Unnamed Tributary into the Alabama River, a water of the state.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution

control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. On October 1, 2007, the Department re-issued General National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number ALG180010 (hereinafter the "Permit") to the Permittee. The Permit was modified on January 1, 2009, to remove outfalls DSN001-1 and DSN006-1. The modified Permit includes outfalls DSN002-1, DSN002-2 and DSN008-1 with DSN002-2 as the representative outfall. The Permit establishes limitations on the discharge of pollutants from point sources, designated therein as outfall numbers DSN002-1, DSN002-2 and DSN008-1 into an unnamed tributary into the Alabama River, a water of the state. The Permit requires that the Permittee monitor its discharges and submit semi-annually Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the analytical results. The Permit requires that the Permittee submit annual petroleum certifications to the Department. The Permittee is also required to maintain in good working order all systems used to achieve compliance with the terms and conditions of the Permit. The Permit also requires the documentation and implementation of a Best Management Practices (hereinafter "BMP") Plan.

5. On June 26, 2008, the Department conducted a Compliance Evaluation Inspection (hereinafter "CEI") at the Facility. The Department documented the following concerns during the inspection: (1) the Spill Prevention Control and Countermeasure (SPCC) Plan was not available for review; and (2) Best Management Practices (BMP) training records were not available during the inspection. On September 16, 2008 the Permittee was issued a Notice of Violation (hereinafter "NOV") and provided a written copy of the CEI Report. The NOV required that the Permittee submit to the Department within thirty days from receipt of the NOV a written report detailing the steps that had been taken or were being taken to correct the violations noted in the NOV. The report

was due to be submitted to the Department on or before October 24, 2008. The Department received the requested report on September 29, 2008.

6. The Department conducted a second CEI at the Facility on August 6, 2009. Thereafter, the Department documented the following concerns: (1) The analysis times were not being recorded on lab sheets that are being sent to the Facility; (2) The pH calibration records are not being maintained on-site; (3) Contaminated soil and fuel spills were observed around the oil separator and around the engine/recycle storage area. It also appeared that the secondary containment in the fuel storage area was leaking.

7. The Permittee has violated Part I. B. 3. c. of the Permit by failing to record the analyses time in accordance with the Permit for Outfall DSN002-2.

8. The Permittee has violated Part I. B. 4. a. of the Permit by failing to maintain on-site the pH calibration records. These records should be maintained on-site and be readily available for review during inspection.

9. The Permittee has violated Part IV. A. 1. b. of the Permit by failing to prevent the spillage or loss of fluids, oil, grease and gasoline.

10. The Permittee violated Part I. A. DSN008 item 7 of the Permit by failing to submit annual petroleum certifications for the years of 2007 and 2008. The annual certification is due to be received in the Department each year on or before January 28th.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit that delayed compliance may confer upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects

of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided; however, the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00, each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** Violations of the Permit consisted of inadequate recordkeeping, non-submittal of annual certifications for DSN008-1 for the years 2007 and 2008 and inadequate housekeeping. The Department has no evidence of irreparable harm to the environment or of any threat to the health and safety of the public as a result of the violations stated herein.

B. **THE STANDARD OF CARE:** The Permittee failed to achieve compliance with the terms and conditions of the Permit by failing to comply with the monitoring and requirements of the Permit.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has no evidence indicating that a significant economic benefit was conferred upon the Permittee as a result of its failure to comply with its Permit requirements.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Department is not aware of any efforts made by the Permittee to minimize or mitigate the effects upon the environment.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Permittee has a history of violations as noted in the Findings.

F. **THE ABILITY TO PAY:** The Permittee has not alleged an inability to pay the civil penalty.

The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18) c (2006 Rplc. Vol.), as well as the need for

timely and effective enforcement and concludes that the penalty amount is appropriate and consistent with the historical penalty range imposed by the Department for similar violations.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations cited herein. Therefore, the Department and the Permittee agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$4,000.00 for the violations stated herein. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that at all penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to prepare and submit to the Department a complete application for enrollment in the Department's Electronic DMR Reporting System Program (hereinafter, "E2 Program"), not later than thirty days after the effective date of this Consent Order. If the Department determines through its review of the submitted application that the submittal is not sufficient for the Permittee to participate in the E2 Program, then the Permittee must modify the application so that it is

sufficient. Modifications to the application, if required, shall be submitted to the Department no later than 14 days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, the Permittee agrees to begin the electronic submittals of DMRs through the E2 Program no later than the 28th day of the month following the first complete monitoring period. The Permittee agrees to fully implement all aspects of the E2 Program including the cessation of federal paper DMR submittals, if applicable, no later than 180 days after acceptance into the E2 Program, unless an extension is granted in writing by the Department. The Permittee further agrees to abide by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program.

D. The Permittee agrees to prepare and submit to the Department, no later than thirty days after the effective date of this Order; an Engineering Report that includes a schedule for implementation (i.e., a Compliance Plan) and that identifies all potential causes of noncompliance. The report must summarize the Permittee's investigation of the changes necessary for the Permittee to implement to achieve compliance with NPDES Permit Number ALG180010. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the report is not sufficient to accomplish compliance with the NPDES Permit, then the Permittee shall modify the report so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to the Department no later than thirty days after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations made in the Engineering Report within 180 of the effective date of this Order.

E. The Permittee agrees that, after the effective date of this Consent Order, it shall pay stipulated penalties for each day it fails to meet any of the milestone dates or satisfy any of the requirements set forth in or established by paragraphs A, B, C, and D contained herein. The stipulated civil penalties for failure to meet each milestone

outlined herein or for failure to meet any milestone date presented in the accepted Compliance Plan or any other requirement date, except for *Force Majeure* acts as hereinafter defined as acts that occur beyond the Permittee's control, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date for a period of ninety days after the required date described in paragraphs A, B, C, and D, then the Department reserves the right to file a new action against the Permittee.

F. The parties agree that the cumulative stipulated penalties described in paragraph E above shall under no circumstances exceed \$12,000.00. Once stipulated penalties of \$12,000.00 are due to the Department and violations continue to occur, or, should violations continue to occur 365 days after the effective date of this Consent Order, then the Department shall be free to issue additional orders or to file suit against the Permittee in the Circuit Court of Montgomery County or in another court of competent jurisdiction to enforce compliance of this Consent Order.

G. The Permittee agrees that payment of stipulated penalties due for any violations stated herein shall be due not later than the 28th day of the month following the missed milestone(s). Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

H. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of

this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

I. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations which are cited in this Consent Order.

J. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

K. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by

the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

L. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

M. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

N. The Department and the Permittee agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

O. The Department and the Permittee agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

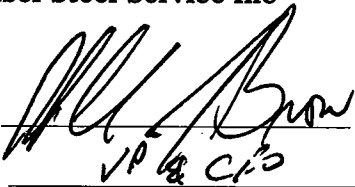
P. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

Q. The Department and the Permittee agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

R. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Sabel Steel Service Inc

By: 
Its: VP & CEO

Date: 10/27/09

**Alabama Department of
Environmental Management**

By: _____

Its: _____

Date: _____